

SENATE BILL 603

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2003 Regular Session
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By: **Senator Kelley**
Introduced and read first time: February 5, 2003
Assigned to: Rules
Re-referred to: Judicial Proceedings and Budget and Taxation, February 7, 2003

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 12, 2003

CHAPTER _____

1 AN ACT concerning

2 **Tobacco Product Manufacturers - Nonparticipating Manufacturers -**
3 **Escrow Requirements**

4 FOR the purpose of requiring tobacco product manufacturers whose cigarettes are
5 sold in the State to periodically submit certain certifications, reports, and
6 notices to ~~the Comptroller and to the Attorney General~~; requiring the
7 ~~Comptroller~~ Attorney General to maintain a directory of cigarettes approved for
8 stamping and sale; prohibiting the stamping or selling or importing of cigarettes
9 not in the directory for sale in the State; requiring manufacturers to appoint an
10 agent for the service of process; requiring reporting of information by licensed
11 wholesalers; ~~prescribing~~ establishing certain penalties, remedies, and
12 enforcement procedures; authorizing the ~~Comptroller~~ Attorney General to adopt
13 regulations requiring certain escrow payments; requiring the Governor to make
14 a certain appropriation from the Cigarette Restitution Fund each year under
15 certain circumstances; providing for construction of this Act; providing that a
16 certain act controls one of the provisions of this Act under certain circumstances;
17 making the provisions of this Act severable; requiring a certain report to be filed
18 by a certain date; requiring a certain certification to be filed by a certain date;
19 requiring a certain directory to be made available by a certain date; defining
20 certain terms; providing for the effective date of this Act; and generally relating
21 to tobacco product manufacturers, the sale of tobacco products, and the
22 enforcement of the provisions of Chapter 169 of the Acts of the General
23 Assembly of 1999, as amended by Chapter 141 of the Acts of the General
24 Assembly of 2001.

25 BY adding to
26 Article - Business Regulation

1 Section 16-501 through 16-508 to be under the new subtitle "Subtitle 5. Escrow
2 Requirements for Nonparticipating Tobacco Product Manufacturers"
3 Annotated Code of Maryland
4 (1998 Replacement Volume and 2002 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article - State Finance and Procurement
7 Section 7-317(g)
8 Annotated Code of Maryland
9 (2001 Replacement Volume and 2002 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Business Regulation**

13 **SUBTITLE 5. ESCROW REQUIREMENTS FOR NONPARTICIPATING TOBACCO PRODUCT**
14 **MANUFACTURERS.**

15 16-501.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) (1) "BRAND FAMILY" MEANS ALL STYLES OF CIGARETTES SOLD UNDER
19 THE SAME TRADEMARK, REGARDLESS OF WHETHER THE CIGARETTES ARE
20 DIFFERENTIATED FROM ONE ANOTHER BY MEANS OF ADDITIONAL MODIFIERS OR
21 DESCRIPTORS SUCH AS "MENTHOL", "LIGHTS", "KINGS", "100S", OR OTHER
22 DIFFERENTIATION.

23 (2) "BRAND FAMILY" INCLUDES ANY USE OF A BRAND NAME (ALONE OR
24 IN CONJUNCTION WITH ANY OTHER WORD) TRADEMARK, LOGO, SYMBOL, MOTTO,
25 SELLING MESSAGE, RECOGNIZABLE PATTERN OF COLORS, OR ANY OTHER INDICIA
26 OF PRODUCT IDENTIFICATION IDENTICAL OR SIMILAR TO, OR IDENTIFIABLE WITH, A
27 PREVIOUSLY KNOWN BRAND OF CIGARETTES.

28 (C) "CIGARETTE" HAS THE ~~SAME~~ MEANING AS STATED IN SUBSECTION 2(E) OF
29 THE ESCROW ACT.

30 (D) "COMPTROLLER" MEANS THE COMPTROLLER OF THE STATE OR ANY
31 AUTHORIZED AGENT OF THE COMPTROLLER WHO IS RESPONSIBLE FOR COLLECTION
32 OF THE EXCISE TAX ON CIGARETTES.

33 (E) "ESCROW ACT" MEANS CHAPTER 169 OF THE ACTS OF THE GENERAL
34 ASSEMBLY OF 1999 AS AMENDED BY CHAPTER 141 OF THE ACTS OF THE GENERAL
35 ASSEMBLY OF 2001.

1 (F) "LICENSED WHOLESALER" MEANS A WHOLESALER WHO IS LICENSED
2 UNDER TITLE 16, SUBTITLE 2, OF THIS ARTICLE TO ACT AS A WHOLESALER AND
3 ~~INCLUDES~~ ANY PERSON WHO IS AN AUTHORIZED AGENT OF THE LICENSED
4 WHOLESALER FOR THE STAMPING AND DISTRIBUTION OF CIGARETTES.

5 (G) "MASTER SETTLEMENT AGREEMENT" HAS THE ~~SAME~~ MEANING ~~AS~~ STATED
6 IN SUBSECTION 2(F) OF THE ESCROW ACT.

7 (H) "NONPARTICIPATING MANUFACTURER" MEANS ANY TOBACCO PRODUCT
8 MANUFACTURER THAT IS NOT A PARTICIPATING MANUFACTURER.

9 (I) "PARTICIPATING MANUFACTURER" HAS THE MEANING ~~AS~~ STATED IN
10 SECTION II(JJ) OF THE MASTER SETTLEMENT AGREEMENT AND ALL AMENDMENTS
11 TO THE AGREEMENT.

12 (J) "QUALIFIED ESCROW FUND" HAS THE ~~SAME~~ MEANING ~~AS~~ STATED IN
13 SUBSECTION 2(G) OF THE ESCROW ACT.

14 (K) "TOBACCO PRODUCT MANUFACTURER" HAS THE MEANING ~~AS~~ STATED IN
15 SUBSECTION 2(J) OF THE ESCROW ACT.

16 (L) "UNITS SOLD" HAS THE MEANING ~~AS~~ STATED IN SUBSECTION 2(K) OF THE
17 ESCROW ACT.

18 16-502.

19 (A) VIOLATIONS OF THE ESCROW ACT, AN ACT CONCERNING
20 NONPARTICIPATING MANUFACTURERS AND DEPOSITS OF FUNDS INTO ESCROW
21 ACCOUNTS, THREATEN THE INTEGRITY OF THE TOBACCO MASTER SETTLEMENT
22 AGREEMENT, THE FISCAL SOUNDNESS OF THE STATE, AND THE PUBLIC HEALTH.

23 (B) ENACTING PROCEDURAL ENHANCEMENTS WILL HELP PREVENT
24 VIOLATIONS AND AID THE ENFORCEMENT OF THE ESCROW ACT AND THEREBY
25 SAFEGUARD THE MASTER SETTLEMENT AGREEMENT, THE FISCAL SOUNDNESS OF
26 THE STATE, AND THE PUBLIC HEALTH.

27 (C) THE PROVISIONS OF THIS SUBTITLE ARE NOT INTENDED TO AND ~~SHALL~~
28 MAY NOT BE INTERPRETED TO AMEND THE ESCROW ACT.

29 16-503.

30 (A) A TOBACCO PRODUCT MANUFACTURER WHOSE CIGARETTES ARE SOLD IN
31 THIS STATE, WHETHER DIRECTLY OR THROUGH A DISTRIBUTOR, RETAILER OR
32 SIMILAR INTERMEDIARY, SHALL EXECUTE AND DELIVER, ON A FORM PRESCRIBED BY
33 ~~THE COMPTROLLER ATTORNEY GENERAL,~~ A CERTIFICATION TO THE ~~COMPTROLLER~~
34 ~~AND~~ ATTORNEY GENERAL NO LATER THAN THE 30TH DAY OF APRIL EACH YEAR,
35 CERTIFYING UNDER PENALTY OF PERJURY THAT, AS OF THE DATE OF THE
36 CERTIFICATION, THE TOBACCO PRODUCT MANUFACTURER EITHER:

37 (1) IS A PARTICIPATING MANUFACTURER; OR

1 (2) IS IN FULL COMPLIANCE WITH THE ESCROW ACT.

2 (B) (1) A PARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS
3 CERTIFICATION A LIST OF ITS BRAND FAMILIES.

4 (2) THE PARTICIPATING MANUFACTURER SHALL UPDATE THE LIST AT
5 LEAST 30 CALENDAR DAYS PRIOR TO ANY ADDITION OR MODIFICATION TO ITS BRAND
6 FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL CERTIFICATION TO
7 THE ATTORNEY GENERAL ~~AND COMPTROLLER~~.

8 (C) (1) A NONPARTICIPATING MANUFACTURER SHALL INCLUDE IN ITS
9 CERTIFICATION A COMPLETE LIST OF ALL OF ITS BRAND FAMILIES.

10 (2) THE CERTIFICATION SHALL:

11 (I) SEPARATELY LIST EACH BRAND FAMILY OF CIGARETTES AND
12 THE NUMBER OF UNITS SOLD FOR EACH BRAND FAMILY THAT WAS SOLD IN THE
13 STATE DURING THE PRECEDING CALENDAR YEAR;

14 (II) LIST EACH OF ITS BRAND FAMILIES THAT HAVE BEEN SOLD IN
15 THE STATE AT ANY TIME DURING THE CURRENT CALENDAR YEAR;

16 (III) INDICATE BY AN ASTERISK ANY BRAND FAMILY SOLD IN THE
17 STATE DURING THE PRECEDING CALENDAR YEAR THAT IS NO LONGER BEING SOLD
18 IN THE STATE AS OF THE DATE OF SUCH CERTIFICATION; AND

19 (IV) IDENTIFY BY NAME AND ADDRESS ANY OTHER
20 MANUFACTURER OF SUCH BRAND FAMILIES IN THE PRECEDING OR CURRENT
21 CALENDAR YEAR.

22 (3) THE NONPARTICIPATING MANUFACTURER SHALL UPDATE THE LIST
23 AT LEAST 30 CALENDAR DAYS PRIOR TO ANY ADDITION OR MODIFICATION OF ITS
24 BRAND FAMILIES BY EXECUTING AND DELIVERING A SUPPLEMENTAL
25 CERTIFICATION TO THE ATTORNEY GENERAL ~~AND THE COMPTROLLER~~.

26 (D) (1) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE
27 CERTIFICATION SHALL FURTHER CERTIFY THAT THE NONPARTICIPATING
28 MANUFACTURER:

29 (I) IS REGISTERED TO DO BUSINESS IN THE STATE OR HAS
30 APPOINTED A RESIDENT AGENT FOR SERVICE OF PROCESS AND PROVIDED NOTICE
31 ~~THEREOF~~ OF THE APPOINTMENT AS REQUIRED BY § 16-505 OF THIS SUBTITLE;

32 (II) HAS ESTABLISHED AND CONTINUES TO MAINTAIN A
33 QUALIFIED ESCROW FUND, AND HAS EXECUTED A QUALIFIED ESCROW AGREEMENT
34 THAT HAS BEEN REVIEWED AND APPROVED BY THE ATTORNEY GENERAL AND THAT
35 GOVERNS THE QUALIFIED ESCROW FUND; AND

1 (III) IS IN FULL COMPLIANCE WITH THE ESCROW ACT AND THIS
2 SUBTITLE AND ANY REGULATIONS ~~PROMULGATED~~ ADOPTED IN ACCORDANCE WITH
3 THE ESCROW ACT AND THIS SUBTITLE.

4 (2) THE CERTIFICATION SHALL INCLUDE:

5 (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
6 FINANCIAL INSTITUTION IN WHICH THE NONPARTICIPATING MANUFACTURER HAS
7 ESTABLISHED A QUALIFIED ESCROW FUND REQUIRED ~~PURSUANT TO~~ UNDER
8 SUBSECTION 3(A)(2) OF THE ESCROW ACT AND ALL REGULATIONS ~~PROMULGATED~~
9 ADOPTED UNDER IT;

10 (II) THE ACCOUNT NUMBER OF THE QUALIFIED ESCROW FUND
11 AND SUBACCOUNT NUMBER FOR THE STATE OF MARYLAND;

12 (III) THE AMOUNT THE NONPARTICIPATING MANUFACTURER
13 PLACED IN THE FUND FOR CIGARETTES SOLD IN THE STATE DURING THE
14 PRECEDING CALENDAR YEAR, THE DATE AND AMOUNT OF EACH DEPOSIT, AND ANY
15 ADDITIONAL INFORMATION THE ~~COMPTROLLER~~ ATTORNEY GENERAL CONSIDERS
16 NECESSARY TO CONFIRM THE INFORMATION REQUIRED BY THIS SUBPARAGRAPH;
17 AND

18 (IV) THE AMOUNT OF AND DATE OF ANY WITHDRAWAL OR
19 TRANSFER OF FUNDS THE NONPARTICIPATING MANUFACTURER MADE AT ANY TIME
20 FROM ~~SUCH THE~~ FUND OR FROM ANY OTHER QUALIFIED ESCROW FUND INTO
21 WHICH THE NONPARTICIPATING MANUFACTURER MADE ESCROW PAYMENTS UNDER
22 SUBSECTION 3(A)(2) OF THE ESCROW ACT AND ALL REGULATIONS ADOPTED UNDER
23 THAT SECTION.

24 (E) (1) A TOBACCO PRODUCT MANUFACTURER MAY NOT INCLUDE A BRAND
25 FAMILY IN ITS CERTIFICATION UNLESS:

26 (I) IN THE CASE OF A PARTICIPATING MANUFACTURER, THE
27 PARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS DEEMED TO
28 BE ITS CIGARETTES FOR PURPOSES OF CALCULATING ITS PAYMENTS UNDER THE
29 MASTER SETTLEMENT AGREEMENT FOR THE RELEVANT YEAR, IN THE VOLUME AND
30 SHARES DETERMINED ~~PURSUANT TO~~ IN ACCORDANCE WITH THE MASTER
31 SETTLEMENT AGREEMENT; AND

32 (II) IN THE CASE OF A NONPARTICIPATING MANUFACTURER, THE
33 NONPARTICIPATING MANUFACTURER AFFIRMS THAT THE BRAND FAMILY IS
34 DEEMED TO BE ITS CIGARETTES FOR PURPOSES OF THE ESCROW ACT.

35 (2) NOTHING IN THIS SECTION MAY BE CONSTRUED AS LIMITING OR
36 OTHERWISE AFFECTING THE STATE'S RIGHT TO MAINTAIN THAT A BRAND FAMILY
37 CONSTITUTES CIGARETTES OF A DIFFERENT TOBACCO PRODUCT MANUFACTURER
38 FOR PURPOSES OF CALCULATING PAYMENTS UNDER THE MASTER SETTLEMENT
39 AGREEMENT OR FOR PURPOSES OF THE ESCROW ACT.

1 (3) THE TOBACCO PRODUCT MANUFACTURER SHALL MAINTAIN ALL
2 INVOICES AND DOCUMENTATION OF SALES AND ANY OTHER INFORMATION RELIED
3 UPON FOR ITS CERTIFICATION FOR A PERIOD OF 5 YEARS, UNLESS OTHERWISE
4 REQUIRED BY LAW TO MAINTAIN THEM FOR A GREATER PERIOD OF TIME.

5 16-504.

6 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE
7 ~~COMPTROLLER ATTORNEY GENERAL~~ SHALL DEVELOP AND MAKE AVAILABLE FOR
8 PUBLIC INSPECTION A DIRECTORY LISTING ALL TOBACCO PRODUCT
9 MANUFACTURERS THAT HAVE PROVIDED CURRENT AND ACCURATE
10 CERTIFICATIONS CONFORMING TO THE REQUIREMENTS OF § 16-503 OF THIS
11 SUBTITLE AND ALL BRAND FAMILIES THAT ARE LISTED IN SUCH CERTIFICATIONS.

12 (B) (1) THE ~~COMPTROLLER ATTORNEY GENERAL~~ MAY NOT INCLUDE OR
13 RETAIN IN THE DIRECTORY THE NAME OR BRAND FAMILIES OF ANY
14 NONPARTICIPATING MANUFACTURER THAT FAILS TO PROVIDE THE REQUIRED
15 CERTIFICATION OR WHOSE CERTIFICATION THE ~~COMPTROLLER ATTORNEY~~
16 ~~GENERAL~~ DETERMINES IS NOT IN COMPLIANCE WITH § 16-503(C)(3) AND (D) OF THIS
17 SUBTITLE, UNLESS THE ~~COMPTROLLER ATTORNEY GENERAL~~ HAS DETERMINED
18 THAT THE VIOLATION HAS BEEN CURED TO THE SATISFACTION OF THE
19 ~~COMPTROLLER ATTORNEY GENERAL~~.

20 (2) NEITHER A TOBACCO PRODUCT MANUFACTURER NOR A BRAND
21 FAMILY MAY BE INCLUDED OR RETAINED IN THE DIRECTORY IF THE ~~COMPTROLLER~~
22 ~~ATTORNEY GENERAL~~ CONCLUDES, IN THE CASE OF A NONPARTICIPATING
23 MANUFACTURER, THAT:

24 (I) ANY ESCROW PAYMENT REQUIRED UNDER SUBSECTION 3(A)(2)
25 OF THE ESCROW ACT FOR ANY PERIOD FOR ANY BRAND FAMILY, WHETHER OR NOT
26 LISTED BY SUCH NONPARTICIPATING MANUFACTURER, HAS NOT BEEN FULLY PAID
27 INTO A QUALIFIED ESCROW FUND GOVERNED BY A QUALIFIED ESCROW AGREEMENT
28 THAT HAS BEEN APPROVED BY THE ATTORNEY GENERAL; OR

29 (II) ANY OUTSTANDING FINAL JUDGMENT, INCLUDING INTEREST
30 ON THE ~~JUDGEMENT~~ JUDGMENT, FOR A VIOLATION OF THE ESCROW ACT HAS NOT
31 BEEN FULLY SATISFIED FOR THE BRAND FAMILY OR THE MANUFACTURER.

32 (3) THE ~~COMPTROLLER ATTORNEY GENERAL~~ SHALL UPDATE THE
33 DIRECTORY AS NECESSARY IN ORDER TO CORRECT MISTAKES AND TO ADD OR
34 REMOVE A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY TO KEEP THE
35 DIRECTORY IN CONFORMITY WITH THE REQUIREMENTS OF THIS SUBTITLE.

36 (4) EACH LICENSED WHOLESALER SHALL PROVIDE AND UPDATE AS
37 NECESSARY AN ELECTRONIC MAIL ADDRESS TO THE ~~COMPTROLLER ATTORNEY~~
38 ~~GENERAL~~ FOR THE PURPOSE OF RECEIVING ANY NOTIFICATIONS ~~AS~~ THAT MAY BE
39 REQUIRED BY THIS SUBTITLE.

40 (C) ~~IT SHALL BE UNLAWFUL FOR ANY A PERSON TO~~ MAY NOT:

1 (1) AFFIX A STAMP TO A PACKAGE OR OTHER CONTAINER OF
2 CIGARETTES OF A TOBACCO PRODUCT MANUFACTURER OR BRAND FAMILY NOT
3 INCLUDED IN THE DIRECTORY; OR

4 (2) SELL, OFFER OR POSSESS FOR SALE IN THIS STATE, OR IMPORT FOR
5 PERSONAL CONSUMPTION IN THIS STATE, CIGARETTES OF A TOBACCO PRODUCT
6 MANUFACTURER OR BRAND FAMILY NOT INCLUDED IN THE DIRECTORY.

7 16-505.

8 (A) (1) ANY NONRESIDENT OR FOREIGN NONPARTICIPATING
9 MANUFACTURER THAT HAS NOT REGISTERED TO DO BUSINESS IN THE STATE AS A
10 FOREIGN CORPORATION OR BUSINESS ENTITY SHALL, AS A CONDITION PRECEDENT
11 TO HAVING ITS BRAND FAMILIES INCLUDED OR RETAINED IN THE DIRECTORY
12 DESCRIBED IN § 16-504 OF THIS SUBTITLE, APPOINT AND CONTINUALLY ENGAGE
13 WITHOUT INTERRUPTION THE SERVICES OF AN AGENT IN THE UNITED STATES TO
14 ACT AS AN AGENT FOR THE SERVICE OF PROCESS ON THE NONRESIDENT OR
15 FOREIGN NONPARTICIPATING MANUFACTURER.

16 (2) ANY PROCESS AND ANY ACTION OR PROCEEDING AGAINST THE
17 NONRESIDENT OR FOREIGN NONPARTICIPATING MANUFACTURER CONCERNING OR
18 ARISING OUT OF THE ENFORCEMENT OF THIS SUBTITLE OR THE ESCROW ACT MAY
19 BE SERVED IN ANY MANNER AUTHORIZED BY LAW.

20 (3) THE SERVICE OF PROCESS SHALL CONSTITUTE LEGAL AND VALID
21 SERVICE OF PROCESS ON THE NONPARTICIPATING MANUFACTURER. THE
22 NONPARTICIPATING MANUFACTURER SHALL PROVIDE, TO THE SATISFACTION OF
23 ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL, THE NAME, ADDRESS, PHONE
24 NUMBER, AND PROOF OF THE APPOINTMENT AND AVAILABILITY OF THE AGENT TO
25 ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL.

26 (B) (1) THE NONPARTICIPATING MANUFACTURER SHALL PROVIDE:

27 (I) NOTICE TO ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL
28 AT LEAST 30 CALENDAR DAYS PRIOR TO TERMINATION OF THE AUTHORITY OF AN
29 AGENT; AND

30 (II) PROOF TO THE SATISFACTION OF THE ATTORNEY GENERAL OF
31 THE APPOINTMENT OF A NEW AGENT NOT LESS THAN 5 CALENDAR DAYS PRIOR TO
32 THE TERMINATION OF AN EXISTING AGENT APPOINTMENT.

33 (2) IF AN AGENT TERMINATES AN AGENCY APPOINTMENT, THE
34 NONPARTICIPATING MANUFACTURER SHALL:

35 (I) NOTIFY ~~THE COMPTROLLER AND~~ THE ATTORNEY GENERAL OF
36 THE TERMINATION WITHIN 5 CALENDAR DAYS; AND

37 (II) INCLUDE PROOF TO THE SATISFACTION OF THE ATTORNEY
38 GENERAL OF THE APPOINTMENT OF A NEW AGENT.

1 16-506.

2 (A) (1) NOT LATER THAN ~~20~~ 21 DAYS AFTER THE END OF EACH CALENDAR
3 QUARTER, AND MORE FREQUENTLY IF SO DIRECTED BY THE COMPTROLLER, EACH
4 LICENSED WHOLESALER SHALL SUBMIT INFORMATION ~~AS IN THE FORM AND~~
5 MANNER THE COMPTROLLER REQUIRES TO FACILITATE COMPLIANCE WITH THIS
6 SUBTITLE, INCLUDING, ~~BUT NOT LIMITED TO,~~ A LIST BY BRAND FAMILY OF THE
7 TOTAL NUMBER OF CIGARETTES, OR IN THE CASE OF ROLL-YOUR-OWN CIGARETTES,
8 THE EQUIVALENT STICK COUNT FOR WHICH THE LICENSED WHOLESALER AFFIXED
9 STAMPS DURING THE PREVIOUS CALENDAR QUARTER OR OTHERWISE PAID THE TAX
10 DUE FOR THE CIGARETTES.

11 (2) THE LICENSED WHOLESALER SHALL MAINTAIN AND MAKE
12 AVAILABLE TO THE COMPTROLLER FOR A PERIOD OF 5 YEARS ALL INVOICES AND
13 DOCUMENTATION OF SALES OF ALL NONPARTICIPATING MANUFACTURER
14 CIGARETTES AND ANY OTHER INFORMATION RELIED ON IN REPORTING TO THE
15 COMPTROLLER.

16 (B) (1) THE COMPTROLLER ~~IS AUTHORIZED TO~~ MAY DISCLOSE TO THE
17 ATTORNEY GENERAL ANY INFORMATION RECEIVED UNDER THIS SUBTITLE AND
18 REQUESTED BY THE ATTORNEY GENERAL FOR PURPOSES OF DETERMINING
19 COMPLIANCE WITH AND ENFORCEMENT OF THE PROVISIONS OF THIS SUBTITLE.

20 (2) THE COMPTROLLER AND THE ATTORNEY GENERAL SHALL SHARE
21 WITH EACH OTHER THE INFORMATION RECEIVED UNDER THIS SUBTITLE AND MAY
22 SHARE THE INFORMATION WITH OTHER FEDERAL, STATE, OR LOCAL AGENCIES
23 ONLY FOR PURPOSES OF ENFORCEMENT OF THIS SUBTITLE, THE ESCROW ACT, OR
24 CORRESPONDING LAWS OF OTHER STATES.

25 (C) THE ATTORNEY GENERAL MAY REQUIRE AT ANY TIME FROM ~~THE A~~
26 A NONPARTICIPATING MANUFACTURER PROOF, FROM THE FINANCIAL INSTITUTION
27 IN WHICH THE MANUFACTURER HAS ESTABLISHED A QUALIFIED ESCROW FUND FOR
28 THE PURPOSE OF COMPLIANCE WITH THE ESCROW ACT, OF THE AMOUNT OF MONEY
29 IN THE ESCROW FUND, EXCLUSIVE OF INTEREST, THE AMOUNT AND DATE OF EACH
30 DEPOSIT TO THE ESCROW FUND, AND THE AMOUNT AND DATE OF EACH
31 WITHDRAWAL FROM THE ESCROW FUND.

32 (D) IN ADDITION TO ANY OTHER INFORMATION REQUIRED TO BE SUBMITTED
33 BY LAW, THE COMPTROLLER OR THE ATTORNEY GENERAL MAY REQUIRE A LICENSED
34 WHOLESALER OR TOBACCO PRODUCT MANUFACTURER TO SUBMIT ANY ADDITIONAL
35 INFORMATION, INCLUDING, ~~BUT NOT LIMITED TO,~~ SAMPLES OF THE PACKAGING OR
36 LABELING OF EACH BRAND FAMILY, AS IS NECESSARY TO ENABLE THE ATTORNEY
37 GENERAL TO DETERMINE WHETHER A TOBACCO PRODUCT MANUFACTURER IS IN
38 COMPLIANCE WITH THIS SUBTITLE.

39 (E) (1) TO PROMOTE COMPLIANCE WITH THIS SUBTITLE, THE
40 ~~COMPTROLLER~~ ATTORNEY GENERAL MAY ADOPT REGULATIONS REQUIRING A
41 TOBACCO PRODUCT MANUFACTURER SUBJECT TO THE REQUIREMENTS OF §
42 16-503(A) OF THIS SUBTITLE TO MAKE THE ESCROW DEPOSITS REQUIRED IN

1 QUARTERLY INSTALLMENTS DURING THE YEAR IN WHICH THE SALES COVERED BY
2 THE DEPOSITS ARE MADE.

3 (2) THE ~~COMPTROLLER~~ ATTORNEY GENERAL MAY REQUIRE
4 PRODUCTION OF INFORMATION SUFFICIENT TO ENABLE THE ~~COMPTROLLER~~
5 ATTORNEY GENERAL TO DETERMINE THE ADEQUACY OF THE AMOUNT OF THE
6 INSTALLMENT DEPOSIT.

7 16-507.

8 (A) (1) IN ADDITION TO OR INSTEAD OF ANY OTHER CIVIL OR CRIMINAL
9 REMEDY PROVIDED BY LAW, ON A DETERMINATION THAT A LICENSED WHOLESALER
10 HAS VIOLATED § 16-504(C) OR § 16-506(A) OF THIS SUBTITLE OR ANY REGULATION
11 ADOPTED UNDER ~~THAT SECTION~~ THIS SUBTITLE, THE COMPTROLLER MAY REVOKE
12 OR SUSPEND THE LICENSE OF ANY LICENSED WHOLESALER IN THE MANNER
13 PROVIDED ~~§ 16-211~~ UNDER §§ 16-211 AND 16-212 OF THIS ARTICLE TITLE.

14 (2) EACH STAMP AFFIXED AND EACH OFFER TO SELL CIGARETTES IN
15 VIOLATION OF § 16-504(C) OF THIS SUBTITLE SHALL CONSTITUTE A SEPARATE
16 VIOLATION.

17 (3) THE COMPTROLLER MAY ALSO IMPOSE A CIVIL PENALTY IN AN
18 AMOUNT NOT TO EXCEED THE GREATER OF 500% OF THE RETAIL VALUE OF THE
19 CIGARETTES SOLD OR \$5,000 ON A DETERMINATION OF VIOLATION OF § 16-504(C) OF
20 THIS SUBTITLE OR ANY REGULATIONS ADOPTED UNDER THAT SECTION.

21 ~~(4) THE PENALTY SHALL BE IMPOSED IN THE MANNER PROVIDED~~
22 ~~UNDER § 16-212 OF THIS ARTICLE.~~

23 (B) (1) ANY CIGARETTES THAT HAVE BEEN SOLD, OFFERED FOR SALE OR
24 POSSESSED FOR SALE IN THIS STATE, OR IMPORTED FOR PERSONAL CONSUMPTION
25 IN THIS STATE IN VIOLATION OF § 16-504(C) OF THIS SUBTITLE SHALL BE DEEMED
26 CONTRABAND UNDER §§ 13-836, 13-837, AND 13-839 OF THE TAX - GENERAL ARTICLE,
27 AND THOSE CIGARETTES SHALL BE SUBJECT TO SEIZURE AND FORFEITURE AS
28 PROVIDED IN THOSE SECTIONS.

29 (2) ALL CIGARETTES SEIZED AND FORFEITED MAY NOT BE RESOLD AND
30 SHALL BE DESTROYED.

31 (C) (1) THE ATTORNEY GENERAL, ON BEHALF OF THE COMPTROLLER, MAY
32 SEEK AN INJUNCTION TO RESTRAIN A THREATENED OR ACTUAL VIOLATION OF §
33 16-504(C), § 16-506(A) OR § 16-506(D) OF THIS SUBTITLE BY A LICENSED WHOLESALER
34 AND COMPEL THE LICENSED WHOLESALER TO COMPLY WITH ~~SUCH~~ THOSE
35 SECTIONS.

36 (2) IN ANY ACTION BROUGHT UNDER THIS SECTION, THE STATE SHALL
37 BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION, COSTS OF THE ACTION,
38 AND REASONABLE ATTORNEY'S FEES.

1 (D) A PERSON WHO SELLS, DISTRIBUTES, ACQUIRES, HOLDS, OWNS,
 2 POSSESSES, TRANSPORTS, IMPORTS, OR CAUSES TO BE IMPORTED, CIGARETTES
 3 THAT THE PERSON KNOWS OR SHOULD KNOW ARE INTENDED FOR DISTRIBUTION OR
 4 SALE IN THE STATE IN VIOLATION OF § 16-504(C) OF THIS SUBTITLE IS GUILTY OF A
 5 MISDEMEANOR, AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000
 6 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

7 16-508.

8 (A) A DETERMINATION ~~OF BY THE COMPTROLLER~~ ATTORNEY GENERAL TO
 9 OMIT OR TO DELETE FROM THE DIRECTORY DESCRIBED IN § 16-504 OF THIS
 10 SUBTITLE A BRAND FAMILY OR TOBACCO PRODUCT MANUFACTURER SHALL BE
 11 SUBJECT TO REVIEW IN ~~THE MANNER PRESCRIBED BY~~ ACCORDANCE WITH TITLE 10,
 12 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

13 (B) THE ATTORNEY GENERAL AND THE COMPTROLLER MAY ADOPT
 14 REGULATIONS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS SUBTITLE.

15 (C) IN ANY ACTION BROUGHT BY THE STATE TO ENFORCE THIS SUBTITLE,
 16 THE STATE SHALL BE ENTITLED TO RECOVER THE COSTS OF INVESTIGATION,
 17 EXPERT WITNESS FEES, COSTS OF THE ACTION, AND REASONABLE ATTORNEY'S
 18 FEES.

19 (D) (1) IF A COURT DETERMINES THAT A PERSON HAS VIOLATED THIS
 20 SUBTITLE, THE COURT SHALL ORDER ANY PROFITS, GAIN, GROSS RECEIPTS, OR
 21 OTHER BENEFIT FROM THE VIOLATION TO BE PAID TO THE STATE TREASURER FOR
 22 DEPOSIT INTO THE CIGARETTE RESTITUTION FUND ESTABLISHED UNDER § 7-317 OF
 23 THE STATE FINANCE AND PROCUREMENT ARTICLE.

24 (2) UNLESS OTHERWISE EXPRESSLY PROVIDED, THE REMEDIES OR
 25 PENALTIES PROVIDED BY THIS SUBTITLE ARE CUMULATIVE TO EACH OTHER, AND TO
 26 THE REMEDIES OR PENALTIES AVAILABLE UNDER ALL OTHER LAWS OF THIS STATE.

27 **Article - State Finance and Procurement**

28 7-317.

29 (g) (1) Amounts may only be expended from the Fund through
 30 appropriations in the State budget bill as provided in this subsection.

31 (2) The Governor shall include in the annual budget bill appropriations
 32 from the Fund equivalent to the lesser of \$100,000,000 or 90% of the funds estimated
 33 to be available to the Fund in the fiscal year for which the appropriations are made.

34 (3) For each fiscal year for which appropriations are made, at least 50%
 35 of the appropriations shall be made for those purposes enumerated in subsection
 36 (f)(1)(i), (ii), and (iii)1 through 9 of this section subject to the requirement of
 37 subsection (e)(2) of this section.

1 (4) For each of fiscal years 2003 through 2006, at least 25% of the
2 appropriations shall be made for the purposes of the Maryland Medical Assistance
3 Program.

4 (5) FOR EACH FISCAL YEAR FOR WHICH APPROPRIATIONS ARE MADE,
5 0.15% OF THE FUND SHALL BE APPROPRIATED FOR THE PURPOSES OF
6 ENFORCEMENT OF ~~SUBTITLE 5~~, TITLE 16, SUBTITLE 5 OF THE BUSINESS REGULATION
7 ARTICLE.

8 [(5)] (6) Any additional appropriations, not subject to paragraph (3) ~~or~~,
9 paragraph (4), OR PARAGRAPH (5) of this subsection, may be made for any lawful
10 purpose.

11 SECTION 2. AND BE IT FURTHER ENACTED, That if a court of competent
12 jurisdiction finds that the provisions of this Act and of Chapter 169 of the Acts of the
13 General Assembly of 1999, as amended by Chapter 141 of the Acts of the General
14 Assembly of 2001, conflict and cannot be harmonized, then the provisions of Chapter
15 169 of the Acts of the General Assembly of 1999, as amended by Chapter 141 of the
16 Acts of the General Assembly of 2001, shall control. If any section, subsection,
17 subdivision, paragraph, sentence, clause or phrase of this Act causes Chapter 169 of
18 the Acts of the General Assembly of 1999, as amended by Chapter 141 of the Acts of
19 the General Assembly of 2001, to no longer constitute a Qualifying or Model Statute,
20 as those terms are defined in the Master Settlement Agreement, then that portion of
21 this Act shall not be valid. If any section, subsection, subdivision, paragraph,
22 sentence, clause or phrase of this Act is for any reason held by a court of competent
23 jurisdiction to be invalid, unlawful, or unconstitutional, the decision of the court does
24 not affect the validity of the remaining portions of this Act or any part of this Act.

25 SECTION 3. AND BE IT FURTHER ENACTED, That under this Act:

26 (a) the first report of licensed wholesalers required by § 16-506(a) of the
27 Business Regulation Article, as added by Section 1 of this Act, shall be due no later
28 than ~~August 1~~ October 21, 2003, covering the period July 1, 2003 through September
29 30, 2003;

30 (b) the first certification by a tobacco product manufacturer required by §
31 16-503(a) of the Business Regulation Article, as added by Section 1 of this Act, shall
32 be due no later than August 15, 2003; and

33 (c) the directory required by § 16-504(a) of the Business Regulation Article, as
34 added by Section 1 of this Act, shall be made available by the ~~Comptroller~~ Attorney
35 General no later than ~~November 1~~ September 15, 2003.

36 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 June 1, 2003.

